THE UNLAWFULNESS OF Bonds of Resignation.

First Written in the YEAR 1684.

FOR THE

Satisfaction of a Private Gentleman.

And now

Made Publick for the Good of Others.

Indultum à jure Beneficium non est alicui auferendum.
Quod suo nomine non licet, nec alieno licebit.
Quod ob gratiam alicujus conceditur, non est in ejus dispendium retorquendum.
Reg. Juris.

LONDON:
Printed, and to be Sold by *E. Whitlock* near *Stationers-Hall*, 1696.

Sacerdotia non sunt delata ad Patronos, ut illa circumciderent, aut de illis deprædarentur; sed ut illorum præsidio & fide tuto conquiescerent. Reformat. Leg. Ecclesiast. sub. Henr. 8. & Edv. 6. Pag. 57.

1826 ; 15

The UNLAWFULNESS OF Bonds of RESIGNATION.

HAving many Years since, in a Publick Discourse, cast some Reflections upon *Bonds of Resignation*; I was not a little importuned to make them yet more Publick, and, amongst other Solicitations, received the following Letter from a very worthy Gentleman, dated *July* 12*th*. 1684.

SIR,

YOur Opinion against Bonds of Resignation, sufficiently convinceth me that they are not commendable, tho' they do not directly appear unlawful: But since the contrary hath been an Error so universally (I had almost said, so advantageously) received by Patrons, I must needs beg you, not only for my own satisfaction, but as a Justice to our Mother the Church of England, *to give those Reasons more at large; or if you think fit, to make them publick. 'Tis charitable to confute an Error so generally received, and Truth is a Cause worthy a good Man; especially where 'tis a Debt to the Church, a Justice to your self and Friends, and will be a particular Obligation to* SIR,

Your most Humble Servant,

W. S.

Upon

Upon the Receipt of which Letter I immediately drew up this short Account.

First, Of the Unlawfulness of Bonds of Resignation; and,
Secondly, Of their great Mischief and Inconveniency.

The Unlawfulness of Bonds of Resignation appears,

I. From the Statute of the 31*st.* of *Elizabeth.*

II. From the Ecclesiastical Canons, confirm'd by that Statute.

III. From the Absurdities that follow upon the Practice of them.

First, By the Statute of 31*st.* *Eliz.* c. 6. *That no Person shall Present for any Summ of Money, Reward, Gift, Profit or Benefit, directly or indirectly; or for, or by reason of any Promise*

Promise, Agreement, Grant, Bond, Covenant, or other assurance of, or for any Money, Reward, Gift, Profit, or Benefit whatsoever, &c. In which Words, all Bonds for Money, or whereby any Profit or Benefit, directly or indirectly, may accrue to the Patron, are expresly forbidden. And whoever Presents for, or in Consideration of the Clerk's having given a Bond to Resign, when his Son comes to be of the Age of a Priest, most certainly Presents for, or in consideration of a Bond, that is to the Profit and Benefit of the Patron, and really preferable to a considerable Summ of Money. And of this we need no other Proof than the Bonds themselves, which are constantly for a greater, or lesser Summ, proportionable to the Value of the Parsonage.

There

There are two Cases in *Crook*'s Reports, which are commonly urged in behalf of those Bonds: When the Patron (to put the most favourable Case) hath a Son design'd to succeed. And Sir *S. D.* pleads for these Bonds, *That Nature teacheth us to provide for our Children.* But that Gentleman should have consider'd, that Nature doth not teach us to provide for our Children by indirect and unlawful Methods; That Daughters are to be provided for as well as Sons; and if this Pretence of Nature will not justifie a Patron to take 500 *l.* of a Clerk, as a Portion for his Daughter, it will not justifie his taking a Bond of Resignation (which may really be worth more) to make provision for his Son. The Eccle-

Crook's Rep. p. 248, & 274.

siastical Canons forbid a Patron *Ecclesiam nomine dotalitatis ad aliquem transferre*; and the Common Law will not allow a Patron to covenant with a Clerk, that upon the condition of his marrying of his Daughter, he will present him to his Church; and the pretence of Nature's teaching of them to provide for their Children, will not excuse them.

But before I leave these two Cases in *Crook*'s Reports, it's very observable that the Point in Issue was only the Validity of such Bonds against the Clerks that gave them, for the Payment of the Money; but whether such Bonds were within the Corruption condemned by the Statute, and so their Preferments void, was not in Issue. And in that famous Case betwixt *Jones* and *Lawrence*, where

where the Clerk alledg'd in Arrest of Judgment, the illegality of the Contract, the Court agreed *that that was not material as to the Bond, because the Statute did not make the Bond void, tho' it did the Presentation*: And so the Judges punish'd those Clerks, by making of them pay the Penalty of their Bonds for not Resigning; but did not secure them from the Penalty of the Statute, and being turn'd out for their corrupt Contracts. But had these two Cases been never so full in behalf of such Contracts; yet we see daily that Judges do not look upon themselves as bound up by the Opinions of their Predecessors, but vary from them as often as they see reason for it; and in this very Matter there is a Case reported by *Noy, p.* 22. betwixt Sir *John Pascall*

and one *Clerk*, in the 15*th.* Year of King *James*, where such Bonds were adjudged illegal. There is also a farther Clause in this Statute, of Queen *Elizabeth*, that is very observable; *viz. That if any Incumbent of any Benefice with Cure of Souls, do, or shall comply, resign, or exchange the same, or corruptly take for, or in respect of the resigning of the same, directly or indirectly, any Sum of Money or Benefit whatsoever, shall lose double the Value of the Summ so given*, &c. Now whoever Resigns for, and upon the Account of his having a good Bond of 500 *l.* or any other Summ, given back to him, doth certainly either directly or indirectly Resign for a Sum of Money, or Benefit, and loseth double the Value of the Bond given up, one half to the King, and the other

other half to the Informer, as the Act expreſſeth it. And this Statute will be ſo far from juſtifying ſuch corrupt Reſignations, that it expreſly forbids them and puniſheth them. And, to ſumm up this Matter, If, after a Bond given to Reſign, it be unlawful for a Clerk to Reſign upon the Account of being free'd from the Penalty of the Bond; and yet if he doth not Reſign at the time appointed, the Patron will recover of him the Penalty of the Bond; then theſe Bonds are in effect the ſame, as if they had been *abſolutely* for ſo much Money at the time agreed on; and ſo there is no doubt but that ſuch Bonds are corrupt, and againſt the Statute.

Secondly, Theſe Bonds are contrary to the Eccleſiaſtical Canons

nons, which are now in force, and were confirm'd by that very Statute of Queen *Elizabeth*. For there it follows in these Words: *Provided that this Act shall not extend to take away, or restrain any Punishment, Pain, or Penalty, limited, prescribed, or inflicted, by the Laws Ecclesiastical, for any of the Offences before, in this Act mention'd; but that the same shall remain in force, and may be put in due Execution, as it might be before the making of this Act, or any thing contained therein to the contrary thereof, in any wise, notwithstanding.* And therefore if at any time the Bishop of the Diocese will proceed to a Sentence of Deprivation against a Clerk for giving Bond to Resign, I take it that there can lie no Prohibition against him, from any Common-Law-Court, because the very

very Act of Parliament that appoints other Puniſhments to the Buying and Selling of Eccleſiaſtical Preferments, reſerves and confirms this Power to the Eccleſiaſtical Courts. Now the ancient Eccleſiaſtical Law, in this Matter, is in a Council held at *Weſtminſter* by *Edmond* Archbiſhop of *Canterbury*, in theſe Words, *Nulli liceat pro Præſentatione alicujus perſonæ, pecuniam vel aliquod emolumentum, pacto interveniente recipere*, &c. Alſo in *Linwood, l.* 2. *de Juramento & Conſtit. Stephani & Cant. Epiſc.* by which every Clerk, before he received Inſtitution, was to take this Oath. *Quod propter Præſentationem illam, nec promiſerit, nec dederit aliquid Præſentanti, nec aliquam propter hoc inierit pactionem*; i. e. *That he hath neither given, nor promiſed any thing to his Patron*

Patron, for presenting him, nor enter'd into any Bond or Agreement upon that Account. And at this day, pursuant to the Canons of King *James* the First, every Clerk, before he receives Institution, must swear, *That he hath made no Simoniacal Payment, Contract, or Promise, directly or indirectly, by himself or any other, to his knowledge, or with his consent, to any person or persons whatsoever, for, or concerning the procuring and obtaining of this Ecclesiastical Dignity, Place, Preferment, Office, or Living, nor will at any time hereafter perform or satisfie any such kind of Payment, Contract, or Promise made by any other, without his knowledge and consent.* Now if there be any doubt or scruple, what is, and what is not a Simoniacal Contract, this cannot be determin'd by Statute or

Common

Common Law, where the Word Simony or Simoniacal is never uſed, nor by thoſe two Caſes, in *Crook*'s Reports, which relate only to the validity of Bonds of Reſignation againſt the Clerks, for the payment of the Forfeiture, without determining whether ſuch Bonds include any corruption againſt the Statute or Canons, but by the Eccleſiaſtical Canons; and there is no doubt but that the Canoniſts did always account ſuch Bonds Simoniacal Contracts. Father *Paul*, of Matters Beneficiary, *p.* 75. hath theſe Words: *'Tis conſtantly affirm'd by all Canoniſts and Caſuiſts, That every Contract, in Matters of Benefices, is Simoniacal, if it be made without the Pope's participation; but with his Intervention, it is legitimate; holding for conſtant this general Propoſition,*

sition, That the Pope, in Beneficiary Matters cannot commit Simony. So that except our English Patrons can get the Pope on their sides, to legitimate every particular Bond of Resignation that they require, they are undoubtedly Simoniacal. The Pope himself is esteem'd above all Laws and Canons, *Legibus Canonibusq; solutus*; but for any other Patron to conferr a Benefice, for a limited time, is held unlawful in all those Churches where these Canons are in force. Even Resignations, if they were occasion'd through fear or compulsion, and were not purely voluntary, were accounted void: Every valid Resignation the Canonists call *Spontaneam ejurationem, & siquis ad beneficium ejurandum metu adigatur, irrita est ejuratio*, Duarenus, l. 8. c. 2.

So

So that in the Canon Law these Bonds destroy themselves; and whilst they compel a Clerk to Resign, make his Resignation forc'd, and by consequence not good.

Thirdly, There are many Absurdities that follow from the practice of these Bonds, both in the Common and Canon-Law. In our Common Law, the Parsonage-house, Church, Church-yard and Glebe, are the Parsons Free-hold; but to have a Free-hold determinable upon a certain number of Years, is absurd; and as a *Lessee* for Years (be they never so many) cannot grant an Estate for Life, because he cannot turn his Lease into a Freehold; so by parity of Reason, a Presentation of a Clerk virtually, *pro tempore limitato*, can-

not be sufficient for a Bishop's Institution and Mandate of Induction, which give an Estate for Life and make a Free-hold. By the Canonists, a Parsonage is defined to be, *Res Ecclesiastica quæ sacerdoti vel Clerico ob sacrum Ministerium in perpetuum conceditur ---- dicitur in perpetuum, quia cùm ad tempus Minister Ecclesiæ ordinari non potest, necesse est Beneficium ipsum quod ministerio conjunctum est, perpetuum esse*, Duarenus, l. 2. c. 4. *i. e.* Every Benefice is granted to a Priest for ever; and therefore it is for ever, because since no one can be ordain'd only for a set time, the Benefice, or Title upon which the Ordination is founded, must be perpetual also. Antiquity knew of no difference betwixt Ordination, and giving a Benefice; and if any one was ordain'd a

Priest

Priest without a Title, by the Canons of the Fourth General Council, his Ordination was void. And if all lawful Ordinations fix a perpetual and indelible Character, as our Canons declare, then Presentations and Institutions must be unlimited also. So that Bonds for Resignation of a Benefice, at a sett time, are very contradictory to the Nature of a Benefice, and include manifest Absurdities both in the Common Law of the Land, and the Canon-Law of the Church.

Fourthly, The Unlawfulness of these Bonds appears both from the Nature of the Obligation, and of the Condition. The Obligation is absolute for a Sum of Money; and if it be unlawful to give a Sum of Money for the Presentation, it

is

is also to give a Bond; for every good Bond is virtually Money; and even our Common Lawyers are agreed, that where the Money, and not the Resignation is designed by the Patron, the Contract is corrupt. Now who knows what the Patron designs? Or if any one could know it, how should he be sure that he will continue in that Mind, and no Grosses nor Losses make him alter it? When the Bond is forfeited, its Money, if the Patron pleaseth; and should he wave the requiring of it, who knows what an Executor may do? And then the demand of the Money made by the Patron, and the payment of it by the Clerk, will be naturally construed in a Court of Judicature, to be no more than what was originally de-

sign'd

sign'd, and, by Consequence, corrupt. And if we look into the Conditions of these Bonds, we shall find that they will not help the Matter; for the Condition is, to resign the Benefice at a time expressed. Now if this Condition be out of the Clerk's Power, and he cannot resign when he pleaseth, then the Bond will be still the same as if it were absolute. If a Man should give Bond to pay a Summ of Money, if before such a day he did not fly up to the Moon, such a Bond is as to the effect of it, the very same, as if it had been a Bond absolute for the Summ of Money mention'd. Now whoever is instituted into a Benefice, takes upon him the care of so many Souls, and cannot resign his Trust without the particular consent of his Ordinary that

that committed it to him. *Father Paul* saith, *That it was never lawful for him that was put into any Ecclesiastical Charge, to leave it off of his own Authority---and 'tis at the Superior's liberty to receive the Resignation or not.* And we have the concurring Opinion of the Canonists in *Duarenus*, *l.* 8. *c.* 2. So that for a Clerk to engage himself under a Summ of Money to resign the Benefice, at a time prefixed, is really to engage to do what is not in his power, and so will be very much the same as a Bond absolute for the Sum agreed on.

Notwithstanding these Reasons for the illegality of Bonds of Resignation, there are two popular Arguments in behalf of them, which deserve to be considered.

First,

First, *That it seems reasonable, that such Gentlemen as are possessed of the Advowson of any rich Benefice, should have the liberty to present one of their own Sons, if fit for it; and should the Benefice become void, whilst his Son designed for it is only in his Education, and not qualify'd for Priesthood, that the Patron have Power to dispose of it provisionally, for a time, till his Son be fit.*

To Answer to which, I grant, that if the Patron, or his Ancestors, had been the Donors of the Temporalties, there might have been some pretence; but if on the contrary, the Right of Patronage arose from the Building of the Church, and neither Tith nor Glebe (generally speaking) were of the Patron's Donation; If the Temporalties (upon the Vacancy of the Church) do not return to the Patron, but the

Bishop, and he, and not the Patron disposeth of them, first by Sequestration, and afterwards by Mandate of Induction, and the Right of Patronage is purely a spiritual Trust to recommend a worthy Person, and not directly concern'd in the Temporalties at all, there will be very little Argument in this pretence; and if the Patron have the liberty to present his own Son, when he is fit, there is no reason that the Laws and Constitutions of Church and State should be strain'd to favour him farther, and enable him to give those Temporalties to his own Children, which were given to the Church by other Persons.

Secondly, It is objected, *That these Bonds of Resignation are very reasonable,*

sonable, when the condition of them is only the Clerk's keeping strict Residence, or not accepting of another Benefice, or the like.

To which I Answer, That even in these Cases, since the Penalty of all these Bonds, upon the forfeiture, is payable only to the Patron, its shrewdly to be suspected, that whatever the pretence be, yet the Patron collaterally and indirectly, at least, hath an eye to the gaining of the Money upon the forfeiture of the Bond.

Now that which should sway with every good Man, is the great heap of Mischiefs and Inconveniencies that attend these Bonds.

First, To such conscientious Clergy-men, as refuse to give Bonds of Resignation; who, tho they be never so learned, never so pious and

well qualified for the Cure, yet are slighted and passed by, and less worthy Persons preferr'd, for no other reason, but because these will enter into those Bonds, which the other will not.

Secondly, To such Clerks as give these Bonds, who many times are troubled in Conscience for what they have done, when it's too late to help it; and tho' they be not, yet having been settled in a Parish, and, perhaps, having a Wife and Children to provide for, they are then call'd upon to resign, when they want the Profits more than ever, and forc'd to seek Bread for themselves and Family; and since most Persons that have given Bond, are apt to persuade themselves, either that the Patron will not put the Bond in suit against them, or that the Son design'd to succeed, will

will either not be fit, or not willing to take Orders, or may die before that time, or that the Bishop may refuse to receive his Resignation, or the like, they will be very apt to look upon their present Preferments as Settlements, and run into the Inconveniencies mention'd.

Thirdly, To the Parishes where such Clerks live; for it cannot be imagin'd, that where the Incumbent is limited to a certain number of years, that he can afford to relieve the Poor, and perform such Acts of Charity and Hospitality as become his Station. How can a temporary Incumbent afford to rebuild the Parsonage-house, be it never so ruinous? How can he afford to repair and beautifie the Chancel? And therefore what is observ'd to happen often to old Incumbents, that they let their Houses

ſhe decay with themſelves, will be generally true of thoſe, who ſee their end more certainly approaching than the other do, and will do as little in repairs, as poſſible, becauſe they ſee that they have but a ſhort time.

Fourthly, To the Church and Kingdom. What Incroachments doth this occaſion upon the Tithes, Glebes, and other Profits of the Church, when the Miniſter is kept in awe by his Patron, and hath neither Money nor Time that he can ſpare for managing a Law-ſuit in defence of them? How will ſuch a one be able to oppoſe Vice and Faction; eſpecially if his Patron be criminal? He muſt be contented to preach ſuch Doctrine as will pleaſe him; and tho' embroiling the Civil Government be the Patrons Deſign, yet the Clerk muſt

blow

blow the Coals, and preach Doctrine suitable, as was too visible in our Civil War; and, lastly, should the Patron be a Roman Catholick, Popery must be quite let alone in his Sermons, or touch'd very gently.

These, and many more Mischiefs are such natural consequences of Bonds of Resignation, and so easily to be observ'd by any one that will give himself time to think, that I shall conclude that Man to be no Friend either to Church or State, that doth not use his best Endeavours to discourage them. And for the more speedy and effectual suppressing of this growing Evil, I Humbly propose it to my Lords the Bishops that they would please to take some pains to inform their Clergy of these Matters; especially such as come for Priesthood or Institution; that they would

would ſet before them the true and genuine ſenſe of the Oath againſt Simony, that it is not impoſed by Statute or Common-Law, but by the Eccleſiaſtical Canons; and that the true ſenſe and meaning of theſe Words is not to be learn'd from the Common Law, but the Eccleſiaſtical. That the Opinion of the Judges in the two Caſes quoted for theſe Bonds, did only relate to the Law of the Land, and not to the Laws of the Church; and that even they, tho' they did declare theſe Bonds good againſt the Clerks that gave them, yet did not determine whether they did not make the Livings void: That the Statute of Queen *Elizabeth*, over and above the Penalties there inflicted, expreſly confirms and ratifieth all Eccleſiaſtical Puniſhments for ſuch Offences; and that after ſuch plain Admonition given by the Biſhops, they would inflict the Eccleſiaſtical Cenſures for Simony and Perjury upon all ſuch as ſhould be found guilty, I doubt not but that ſuch a Method would effectually ſuppreſs ſuch Contracts for the future, and deliver the Church from thoſe miſchievous Snares that have of late years ſo mightily prevailed.

FINIS.